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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/940,117	08/28/2001	Vincent P. Robibero	1-15662	3920
43935 7590 06/09/2010 FRASER CLEMENS MARTIN & MILLER LLC 28366 KENSINGTON LANE PERRYSBURG, OH 43551				
EXAMINER				
VAN BRAMER, JOHN W				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte VINCENT P. ROBIBERO

Appeal 2010-001302
Application 09/940,117
Technology Center 3600

Before DALE M. SHAW, *Division 2 Support Administrator*.

ORDER REMANDING APPEAL TO EXAMINER

This is a Director ordered remand under 37 CFR §41.35(c) for the matter identified below. Accordingly, the application is herewith being remanded to the Examiner.

This application was electronically received at the Board of Patent Appeals and Interferences on November 2, 2009. A Docketing Notice was mailed and Appeal No. 2010-001302 was assigned on November 27, 2009.

Claims 18 and 35 of the instant application contain functional language that may be indefinite under 35 U.S.C. § 112, 2nd paragraph. *See Ex Parte Rodriquez*, 2009 WL 3756279 (BPAI 2009) and *Aristocrat Techs.*

Austl. Pty. Ltd. v. Int'l. Game Tech., 521 F.3d 1328 (Fed Cir. 2008). On September 2, 2008 the Deputy Commissioner for Patent Examination Policy, John J. Love, issued a memorandum entitled “Rejections under 35 U.S.C. 112, second paragraph, when examining means (or step) plus function claim limitations under 35 U.S.C. 112, sixth paragraph”, located at: http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/section_112_6th_09_02_2008.pdf . Thus, there is a question as to whether claims 18 and 35 and the claims which depend upon these claims, meet the requirements of being definite under 35 U.S.C. § 112, 2nd paragraph.

Accordingly, it is

ORDERED that the application is remanded to the Examiner to determine if claims 18 and 35 and the claims which depend upon these claims, meet the requirements of 35 U.S.C. § 112, 2nd paragraph.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DMS/mls

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